Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20054

In the Matter of Amendment of the Commission's Rules to Establish Competitive Service Safeguards for Local Exchange Carrier Provision of Commercial Mobile Radio Services	WT Docket No. 96-162
Implementation of Section 601(d) of the Telecommunications Act of 1996, and Sections 222 and 251(c)(5) of the Communications Act of 1934	
Amendment of the Commission's Rules to Establish New Personal Communications Services	GEN Docket No. 90-314
Requests of Bell Atlantic-NYNEX Mobile, Inc., and U S West, Inc., for Waiver of Section 22.903 of the Commission's Rules	

COMMENTS OF PACIFIC BELL, NEVADA BELL, PACIFIC BELL MOBILE SERVICES AND PACIFIC TELESIS MOBILE SERVICES

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October 3, 1996

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SUMMARY

Pacific Bell, Nevada Bell, Pacific Bell Mobile Services, and Pacific Telesis Mobile Services support the Commission's proposal for nonstructural safeguards for the provision of Personal Communications Services ("PCS") by local exchange carriers. We are pleased that the Commission has focused on the five elements in our approved Safeguards Plan. Since our Plan was filed, the Telecommunications Act of 1996 was passed which changes the obligations of local exchange carriers with respect to interconnection and network disclosure. In addition, the Telecommunications Act of 1996 contained new requirements with respect to customer proprietary network information ("CPNI"). We will be filing amendments to our Plan as the rules implementing the Act are finalized.

We strongly urge the Commission to treat the wireless family of services as a whole for the purposes of CPNI. This is consistent with past Commission practices relating to the provision of wireless services and customer expectations.

The Commission's nonstructural safeguards include the requirement that PCS be provided by a separate corporate affiliate. It is important that the Commission also specify that PCS must be treated as non-regulated for federal accounting safeguard purposes since the affiliate transaction rules only apply to transactions between regulated carriers and their non-regulated affiliates.

Finally, we urge the Commission to provide that the separate affiliate requirement sunset in a time frame consistent with the sunset provisions for separate affiliates in the 1996 Telecommunications Act.

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I. INTRODUCTION.

Pacific Bell, Nevada Bell, Pacific Bell Mobile Services and Pacific Telesis Mobile Services ("Pacific") hereby comment on Section VI of the Notice of Proposed Rulemaking in the above-captioned proceeding relating to the safeguards for the local

exchange carrier ("LEC") provision of commercial mobile radio services ("CMRS").[1] We are pleased that the Commission used the five elements in our PCS Safeguards plan as a model for uniform competitive nonstructural safeguards for LEC in-region PCS.

The five elements are: (1) a description of a separate corporate affiliate for the provision of PCS which does not include full structural separation; (2) a description of compliance with Part 64 and Part 32 accounting rules, with copies of relevant Cost Accounting Manual ("CAM") changes attached; (3) a description of planned compliance with all interconnection obligations; (4) a description of compliance with network disclosure rules; and (5) a description of planned compliance with the CPNI requirements. Our comments will address each of these requirements in light of the Telecommunications Act of 1996 which was passed after our plan was submitted.

II. SEPARATE AFFILIATE.

The Commission has proposed that the separate corporate affiliate meet the following conditions: (1) maintain separate books of account, (2) not jointly own transmission or switching facilities with the exchange telephone company and (3) obtain any exchange telephone company provided communications services at tariffed rates and

[1] In the Amendment of the Commission's Rules to Establish Competitive Service Safeguards for Local Exchange Carrier Provision of Commercial Mobile Radio Services, Implementation of Section 601(d) of the Telecommunications Act of 1996, and Sections 222 and 251(c)(5) of the Communications Act of 1934, Amendment of the Commission's Rules to Establish New Personal Communications Services and Requests of Bell Atlantic-NYNEX Mobile, Inc., and U S West, Inc., for Waiver of Section 22.903 of the Commission's Rules, WT Docket No. 96-162 and GEN Docket No. 90-314, Notice of Proposed Rulemaking, Order and Remand, and Waiver Order, released August 13, 1996, ("NPRM").

conditions.[2] The Commission requests comment on the effect that changes in interconnection tariffing requirements under Section 251 and 252 of the 1996 Act have on the third condition.[3] The Commission appears to acknowledge that interconnection will be provided pursuant to contract rather than tariff.[4] Consequently, we believe the condition should be changed to say that the separate affiliate must obtain any exchange telephone company provided communications services other than interconnection arrangements at tariffed rates and conditions. The rules relating to LEC/CMRS interconnection are very specific.[5] Pacific Bell and Nevada Bell are under an obligation under the Commission's Rules to "provide interconnection between its network and that of a requesting carrier at a level of quality that is at least indistinguishable from that which the incumbent provides itself, a subsidiary, an affiliate or any other party."[6] Thus, there is no need to adopt an additional rule in this proceeding with respect to purchase of interconnection services other than to note that the interconnection rules in new part 51 include LEC/CMRS interconnection and provide that communications services will be offered pursuant to agreements rather than being provided solely under tariffs.

The Commission also notes, consistent with Section 601(d) that the joint marketing of PCS and LEC landline services should be permitted on a compensatory,

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[2] NPRM, para 118.

[3] Id. at para 119.

[4] Such agreements often reference existing tariffs.

[5] In the Matter of Implementation of the Local Competition Provision in the Telecommunications Act of 1996, Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers, CC Docket Nos. 96-98 and 95-185, First Report and Order, released August 8, 1996, paras. 999-1118.

[6] Id. at para. 224.

arms-length basis, subject to the Part 64 cost allocation and affiliate transaction rules and the CPNI requirements.[7] This is the same structure we set forth in our plan and we agree that it should be included in the Commission's LEC/PCS safeguards.

III. ACCOUNTING.

The Commission indicates that the LEC must describe how it will comply with Parts 64 and 32 and supply changes to the CAM.[8] It also comments that only through the existing annual audit process can compliance be determined.[9]

We fully agree that existing accounting rules are adequate to prevent cross-subsidization. However, we believe it is important for the Commission to specify that PCS must be treated as non-regulated for federal accounting safeguard purposes. We indicated that we would be treating PCS as non-regulated for federal accounting purposes. This is important because even though the PCS costs are already separated from the LEC costs by virtue of being in a separate subsidiary, the affiliate transaction rules are solely designed for transactions between regulated carriers and their nonregulated affiliates.[10] Consequently, it is important for the Commission to make an explicit finding that despite the fact that PCS is a regulated service in many respects, the absence of rate regulation makes it a non-regulated service for federal accounting safeguard purposes. This is consistent with the Commission's order in its SMR

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[7] NPRM, p. 119.

[8] Id. at para. 120.

[9] Id.

[10] Separation of Costs of Regulated Telephone Service from Costs if Nonregulated Service Order on Reconsideration, CC Docket No. 86-111, 2 FCC Rcd 6283, 6296, para. 122 (1987).

proceeding in which it stated that the non-regulated category, includes activities, such as SMR services, that have never been subject to rate regulation.[11]

IV. CUSTOMER PROPRIETARY NETWORK INFORMATION.

In our Plan we committed to applying the existing CPNI rules to the provision of PCS. Since our plan was filed, the passage of the Telecommunications Act has created new CPNI requirements. The Commission is currently in the process of implementing the requirements in its rulemaking on Section 222 of the Telecommunications Act.[12]

The Commission has requested comment on issues relating to including CPNI in the nonstructural safeguards requirements. Specifically, it requested comment on what type of organizational and procedural guidelines for the protection of and dissemination of CPNI should apply to the PCS operations of a LEC.[13] It is difficult to comment without knowing the outcome of the Commission's CPNI rulemaking. However, if the PCS operations are in a separate affiliate as required in the Commission's LEC/CMRS safeguards proposal, and wireless services are treated as one telecommunications service "bucket" as proposed in the Commission's NPRM on

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[11] In the Matter of Eligibility for the Specialized Mobile Radio Services and Radio Services in the 220-222 MHz Land Mobile Band and Use of Radio, GN Docket No. 94-90, Report and Order, 10 FCC Rcd 628, para. 23, n. 77 (1995).

[12] In the Matter of Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information, CC Docket No. 96-115, Notice of Proposed Rulemaking, released May 17, 1996, ("CPNI NPRM").

[13] NPRM, para, 121.

CPNI,[14] no organizational structures should be necessary. The CPNI of wireless customers would be entirely separate from LEC CPNI and would only be shared pursuant to the consent procedures put in place by the Commission.

The Commission also seeks comment on whether PCS, cellular, and other CMRS, such as paging and Specialized Mobile Radio, should be considered the same service (i.e. commercial mobile radio service) for purposes of implementing Section 222.[15] We believe that all CMRS should be treated as the same service.

The Commission also asks if toll services provided by means of CMRS should be treated as a distinct "telecommunications service" for the purposes of implementing Section 222.[16] Toll services provided by a CMRS provider should definitely not be treated as a distinct telecommunications service.

The Telecommunications Act of 1996 specifically included CMRS in the category of services for which BOCs can provide incidental interLATA service.[17] The Act also specified that CMRS providers did not have to offer equal access to common carriers for the provision of telephone toll service.[18] Congress clearly contemplated that CMRS providers would be offering wireless local and toll service together as a package. There is no reason to treat wireless local and toll services separately for the purpose of CPNI. The customer expects to be purchasing wireless service and would be needlessly

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[14] CPNI NPRM, para. 22.

[15] NPRM, para. 121.

[16] Id.

[17] 47 USC §271(b)(3) and (g)(3).

[18] 47 USC §332(c)(8).

confused and frustrated with a consent requirement applied to two parts of the same service.

In the CPNI NPRM, the Commission stated that the CPNI obtained from the provision of any telecommunications service may not be used to market information services or CPE without prior customer notification.[19] We have taken a contrary position in that proceeding.[20] We are particularly concerned that this view may be inappropriately extended to CMRS.

Over a decade ago, the Commission analyzed the nature of wireless offerings and concluded that the wireless family of services can be provided as a whole without regard to the distinction of CPE and enhanced/information services.[21] Thus, wireless services have never been subject to the CPNI rules related to CPE and enhanced services. The only CPNI rule imposed in the past with respect to wireless services prohibited a BOC from sharing CPNI with its cellular subsidiary unless the information was publicly available on the same terms and conditions.[22]

The Commission should explicitly find that CMRS encompasses all components such as local, toll, voice mail, text messaging, handsets etc. Enhanced/information service is a distinction associated with landline service that should

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[19] CPNI NPRM, para. 26.

[20] Comments of Pacific Telesis Group, CC Docket No. 96-115, p. 4, June 26, 1996; Reply Comments, pp. 7-8.

[21] In the Matter of Policy and Rules Concerning the Furnishing of Customer Premises Equipment, Enhanced Services and Cellular Communications Services by Bell Operating Companies, CC Docket No. 84-637, Report and Order, 57 Rad. Reg. 2d 989 (1985).

[22] 47 CFR §22.903(f).

not be carried over into the competitive wireless arena. CMRS has a very broad definition.[23] It has never been broken into component parts. Unlike landline service, wireless service has never raised bottleneck discrimination concerns. Competition has always existed in the wireless market and will continue to grow due to the introduction of PCS and the development of SMRS.

The definition of PCS is purposefully very broad. The Commission stated in its First Report and Order. "We continue to believe that a broad definition is warranted. We find that our concept of PCS as a family of services is appropriate and will permit PCS to encompass a wide array of mobile, portable, and ancillary services to individuals and businesses, and be integrated with a variety of competing networks."[24] The Commission repeated this philosophy in its Second Report and Order relating to broadband PCS. "We continue to believe that it is important that the PCS definition provide for the widest possible range of such communications. We disagree with parties

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[23] Section 332(d) provides the definition of CMS as "any mobile service (as defined in Section 153(n) of this title) that is provided for profit and makes interconnected service available (A) to the public and (B) to such classes of eligible users as to be effectively available to a substantial portion of the public, as specified by regulation by the Commission." Section 153(n) has a broad definition: "Mobile service means a radio communication service carried on between mobile stations or receivers and land stations, and by mobile stations communicating among themselves, and includes (1) both one-way and two-way radio communications services, (2) a mobile service which provides a regularly interacting group base, mobile, portable and associated control and relay stations (whether licensed on an individual, cooperative, or multiple basis) for private one-way or two-way land mobile radio communications by eligible users over designated areas of operation and (3) any service for which a license is required in a personal communications service established pursuant to the proceeding entitled Amendment to the Commission's Rules to Establish New Personal Communications Services (GEN Docket No. 90-314; ET Docket No. 92-100), or any successor proceeding."

[24] In the Matter of the Commission's Rules to Establish New Narrowband Personal Communications Services, GEN Docket No. 90-314, First Report and Order, 8 FCC Rcd 7162, para. 7 (1993).

that contend our proposed definition is too broad and unfocused.... We believe the more restrictive approaches....would tend to have a chilling effect on innovation and creativity that would diminish rather than encourage the introduction of new PCS applications."[25] The current definition of permissible communications states that "PCS licensees may provide any mobile communication services on their assigned spectrum. Fixed services may be provided on a co-primary basis with mobile operations."[26]

To impose distinctions within the family of PCS services for CPNI purposes would be at odds with the broad definition of PCS enacted by the Commission.

In addition, CPE has generally been marketed with wireless service. The Commission has explicitly authorized the bundling of CPE and cellular service under certain conditions.[27] Customers expect to have the ability to buy wireless handsets and service together. We strongly urge the Wireless Bureau to treat all wireless CPNI including that related to handsets within one category so that wireless providers do not have to implement cumbersome systems and consent procedures that will only confuse and frustrate customers.

Section 222 "strives to balance both competitive and consumer privacy interests."[28] As noted above, wireless service is competitive. Thus, there is no

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[25] In the Matter of the Commission's Rules to Establish New Personal Communications Services, GEN Docket No. 90-314, Second Report and Order, 8 FCC Rcd 7700, paras. 23-24 (1993).

[26] 47 CFR §24.3.

[27] In the Matter of Bundling Cellular Customer Premises Equipment With Cellular Service, Report and Order, CC Docket No. 91-34, 7 FCC Rcd 4028 (1992).

[28] Telecommunications Act of 1996, H.R. Rep. No. 498, 104th Cong. 2nd Sess. 205 (1996).

competitive basis for breaking the service down into component parts.[29] Likewise, as long as the CPNI is maintained within the wireless carrier and not released to third parties without consent, there should be no privacy interest at stake. We strongly urge the Commission to ensure that the wireless family of services and handsets can continue to be marketed as they have in the past without any separate distinction for CPNI purposes.

When the Commission announces its new CPNI rules, we will file an amendment to our Safeguards Plan explaining our procedures for compliance. In the meantime we will follow the CPNI compliance procedures stated in our safeguards plan.

V. INTERCONNECTION.

At the time we filed our safeguards plan, we outlined how Pacific Bell and Nevada Bell complied with the existing interconnection requirements. We anticipated that at the state level and in CC Docket No. 94-54, interconnection requirements might change and stated that we would comply with any changes. The passage of the 1996 Telecommunications Act has significantly changed LEC interconnection requirements, including LEC/CMRS interconnection, imposing new requirements such as collocation and reciprocal compensation.[30] We will file an amendment to our plan in the near future addressing our compliance with the new interconnection requirements imposed by the Act and the Commission's rules.[31]

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[29] LEC CPNI is already separated under the Commission's proposed rule that would place wireless service in its own bucket, so there is no access to LEC CPNI without customer consent.

[30] 47 USC §251.

[31] The timing of the filing maybe affected by the appeal pending in the Eighth Circuit and whether the temporary stay is extended. Iowa Utilities Board v. FCC, No. 96-3321, (8th Circuit).

VI. NETWORK DISCLOSURE.

In our Plan Pacific Bell and Nevada Bell committed to complying with the network disclosure rules already in place with respect to CPE and enhanced services in the provision of PCS. The Telecommunications Act and the Commission's Rules impose a more extensive network disclosure requirement on incumbent LECs.[32] Our amendment addressing the new interconnection requirements will also address the new network disclosure requirements.

VIII. SUNSET.

The Commission seeks comment on whether its nonstructural safeguards for the provision of PCS should be subject to a sunset provision. We believe that the separate affiliate requirement should sunset in three to four years from the date the rule is adopted in the proceeding.

The Telecommunications Act has various sunset provisions. The requirement for a separate subsidiary for interLATA services originating in-region and the requirement for a separate affiliate for manufacturing sunsets three years after

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[32] 47 USC §251(c)(5); In the Matters of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers, CC Docket No. 95-185, Area Code Relief Plan for Dallas and Houston, Ordered by the Public Utility Commission of Texas, NSD File No. 96-8, Administration of the North American Numbering Plan, CC Docket No. 92-237, Proposed 708 Relief Plan and 630 Numbering Plan Area Code by Ameritech-Illinois, IAD File No, 94-102, Second Report and Order and Memorandum Opinion and Order, released August 8, 1996, paras. 165-260.

interLATA relief is granted unless the Commission extends it.[33] The separate affiliate requirement for InterLATA information services sunsets four years after enactment unless the Commission extends it.[34] The separate affiliate for electronic publishing sunsets four years after enactment.[35] Congress clearly understood that there will be no need for stringent structural separation as competition evolves. The Commission should recognize this eventuality in this context also. There will be a lesser need to impose certain corporate structures as competition continues to grow. Moreover, elimination of the separate affiliate at sometime in the future only affects one component of the safeguards. The accounting, CPNI, interconnection and network disclosure rules are independent. By treating the costs of PCS as non-regulated, even without a separate affiliate, the costs will be separate from regulated costs, addressing the Commission's concern with cross-subsidy.

As all parts of the telecommunications industry become more competitive, the Commission must ensure that regulatory requirements are lifted accordingly. It is entirely consistent with the "pro-competitive, deregulatory national framework"[36] of the 1996 Telecommunications Act to include in the rules a sunset provision for the separate affiliate requirement. As noted above, the sunset date should reflect the time that Congress chose for the sunset of its separate affiliate requirements - three to four years.

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[33] 47 USC §272(f)(1).

[34] 47 USC §272(f)(2).

[35] 47 USC §274(g)(2).

[36] S. Con. Rep. No. 104-230, 10th Cong. 2nd Sess. 1 (1996).

VIII. APPLICATION TO ALL LEC/PCS LICENSEES.

The Commission requests comment on whether the safeguards should apply to only those LEC's with more than 10 MHz of PCS licenses.[37] The concerns the Commission desires to address exist regardless of whether the LEC holds a 10 MHz or two 10 MHz licenses, one 30 MHz license or some combination up to 40 MHz. The rules should be applied equally to all LECs with PCS licenses.

IX. CONCLUSION.

PCS offers a new and exciting element of competition in the wireless market. We applaud the Commission's proposal to adopt a set of flexible service safeguards with respect to LEC in-region broadband PCS and we urge adoption of the proposal with the modifications noted in the foregoing.

Respectfully submitted,

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[37] NPRM, para. 114.